

§ 4.38a

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of the containers to which labels are to be or have been affixed.

[T.D. ATF-53, 43 FR 37677, Aug. 23, 1978, as amended by T.D. ATF-66, 45 FR 40544, June 13, 1980; T.D. ATF-94, 46 FR 55095, Nov. 6, 1981; T.D. ATF-249, 52 FR 5955, Feb. 27, 1987; T.D. ATF-275, 53 FR 27046, July 18, 1988; T.D. ATF-312, 56 FR 31077, July 9, 1991]

§ 4.38a Bottle cartons, booklets and leaflets.

(a) *General.* An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by §§ 4.30 through 4.39 on labels.

(b) *Sealed cartons.* If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than a shipping container), such coverings, cartons, or other containers must bear all mandatory label information.

(c) *Other cartons.* (1) If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable, it may display any information which is not in conflict with the label on the bottle contained therein.

(2) Cartons displaying brand names and/or designations must display such names and designations in their entirety—brand names required to be modified, e.g. by “Brand” or “Product of U.S.A.”, must also display such modification.

(3) Wines for which a truthful and adequate statement of composition is required must display such statement.

[T.D. ATF-36, 41 FR 47425, Oct. 29, 1976]

§ 4.39 Prohibited practices.

(a) *Statements on labels.* Containers of wine, or any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer shall not contain:

(1) Any statement that is false or untrue in any particular, or that, irrespective of falsity, directly, or by am-

biguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer.

(5) Any statement, design, device or representation of or relating to any guarantee, irrespective of falsity, which the appropriate ATF officer finds to be likely to mislead the consumer. Money-back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; *Provided*, That this paragraph shall not apply to the use of the name of any person engaged in business as a producer, blender, rectifier, importer, wholesaler, retailer, bottler, or warehouseman of wine, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) Any statement, design, device, or representation (other than a statement of alcohol content in conformity with § 4.36), which tends to create the impression that a wine:

- (i) Contains distilled spirits;
- (ii) Is comparable to a distilled spirit;
- or
- (iii) Has intoxicating qualities.